146 Mass., 189—that the clubs did not "sell" to their members and so were not liable under their license acts. In 1881 it was enacted that "In any town in which the inhabitants vote that license shall not be granted all buildings or places therein used by clubs for the purpose of selling, distributing or dispensing intoxicating liquors to their members and others shall be deemed common nuisances," and in 1887 the statute was extended to cover clubs in places voting for licenses, unless they should first take out a special club license as required by the latter act. Under the "selling, distributing or dispensing" clause of the Act of 1881, it was decided that a place would be equally a nuisance if used by a club either to sell intoxicating liquors to its members or to distribute among its members intoxicating liquors owned by them in common, or to procure for and dispense to its members intoxicating liquors which was bought for and belonged to them individually: Com. *v.* Reber, 152 Mass., 537; Com. *v.* Jacobs, 152 Mass., 276; and Com. *v.* Ryan, 152 Mass., 283. To escape this penalty it would have to appear that the club did not own any liquor; that it neither sold, nor distributed, nor dispensed any; that each member kept at the club—as he might in his dwelling—a private stock of liquor, purchased either by himself or by the steward of the club at his special direction and as his agent and not as the agent of the club, and that payment for the liquor was, in every instance, made with money of the member to the dealer and not to the club or any one for it: 4 Harvard L. R., 183-4.

MAYNE R. LONGSTRETH.

DEPARTMENT OF CRIMINAL LAW AND CRIMINAL PRACTICE.

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COMMONWEALTH *v.* RANDOLPH.[1] SUPREME COURT OF PENNSYLVANIA.

Test of Crime at Common Law—Solicitation to Commit Murder.

The test whether a certain act is a crime at common law is whether it injuriously affects the public police and economy. Therefore, a solicitation to commit murder, accompanied by the offer of a money reward, is indictable as an offence at common law.

[1] Decided January 4, 1892. Reported in 146 Pa., 83.

STATEMENT OF FACTS.

The indictment charged substantially that the defendant did, with force and arms, etc., unlawfully, wickedly and maliciously solicit and invite one Samuel Kissinger, and by the offer and promise to pay to him the sum of $1,000, did incite and encourage him, the said Samuel Kissinger, one William S. Foltz, in the peace of the Commonwealth, feloniously to kill, murder and slay.

The defendant was found guilty, and, thereupon, moved for a new trial, and in arrest of judgment and assigned the reason that the indictment charged no offence either at common law or by statute.

The Court below overruled both motions, and on appeal to the Supreme Court, this judgment was affirmed.

OFFENCES AT COMMON LAW.

Upon being asked whether a certain act is indictable or not the question arises, is the matter complained of forbidden by a positive law or statute, or is it contrary to the common law?

What is "an offence at common law?" Blackstone in his Commentaries, Book IV, page 162 says, "The last species of offences which especially affect the Commonwealth are those against the public police or economy. By the public police and economy I mean the due regulation and domestic order of the kingdom, whereby the individuals of the State, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations. This head of offences must therefore be very miscellaneous, as it comprises all such crimes as especially affect public society and are not comprehended under any of the four preceding series."

It is indictable under the common law in Pennsylvania as a common nuisance, to draw together in the streets of a city large numbers of people by means of violent, loud and indecent language, whereby the public right of passage along the street is prevented and obstructed. Barker *v.* Com., 19 Pa., 412 (1852).

In a case decided in Massachusetts where the defendant was indicted for illegal voting for selectmen, the Court said: "There cannot be a doubt that the offence described in the indictment is a misdemeanor at common law. It is a general principle that where a statute gives a privilege and one wilfully violates such privilege, the common law will punish such violation." Com. *v.* Silsbee, 9 Mass., 417 (1812), and in Com. *v.* Hoxey, 16 Mass., 385 (1820), an indictment at common law for disturbing a town meeting was sustained. Likewise in Pennsylvania, to disturb a meeting of a board of school directors was held to be a common law offence. Cam-

bell *v.* Com., 59 Pa., 266 (1868). Among the different offences which may be indicted and punished at common law are the following: Common brawlers, Com. *v.* Foley, 99 Mass., 497 (1868); common scolds, James *v.* Com., 12 S. & R. (Pa.), 220 (1825); Com. *v.* Mohn, 52 Pa., 243 (1866); anything shocking the religious sense of the community, State *v.* Pepper, 68 N. C., 259 (1873); Updegraph *v.* Com., 11 S. & R. (Pa.), 394 (1824); any acts prejudicial to public health, Meeker *v.* Van Renselear, 15 Wend., 397 (1836); State *v.* Buckman, 8 N. H., 203 (1836); exposing a person or animal suffering from disease, Rex *v.* Vantandillo, 4 M. & S., 73 (1815); eavesdropping, Com. *v.* Lovett, 4 Clark (Pa.), 5 (1831); State *v.* Williams, 2 Tenn., 108 (1808); open and notorious lewdness, Regivo *v.* Harris, 11 Cox C. C., 659 (1871); Peak *v.* State, 10 Humph. (Tenn.), 99 (1849); State *v.* Moore, 1 Swan (Tenn.), 136 (1851); keeping a disorderly house to the common nuisance and disturbance of the community, Hunter *v.* Com., 2 S. &. R. (Pa.), 298 (1816); State *v.* Evans, 3 Iredell (N. C.), 603 (1845). In many States where a code has been adopted the application of the common law is thereby revoked and there can be no common law offences.

In Pennsylvania, however, to avoid this result, under the Code of March 31, 1860, P. L., 425 § 178, it is provided that "every felony, misdemeanor or offence whatever, not specially provided for in this act, may and shall be punished as heretofore." By reason of this provision an indictment will still lie against a woman as a common scold in Pennsylvania, Com. *v.* Mohn, *supra*.

So long as one can find a precedent there is little or no difficulty in determining whether or not a given state of facts can be punished at common law in the absence of a positive law or statute. But where no precedent exists in the books the question becomes more difficult. Particularly is this true when the circumstances and conditions constituting the offence complained of are in nowise analogous to any circumstances or conditions known at common law. For example, a school board was unknown in the machinery of government at common law; so, also, election officers and a ballot such as we now have were no part of the system of control in England in the days of the common law; hence it became an interesting question to decide whether the disturbance of a meeting of such school directors, or to commit a fraud by such election officers, or to cheat at an election can, in the absence of a statute or precedent, be punished as crimes under the old common law.

Two of these questions had been decided in Pennsylvania. The one relating to the disturbance of a meeting of School Directors in Campbell *v.* Com., *supra*, and the other relating to the purity and fairness of elections in Com. *v.* McHale, 97 Pa., 397 (1881).

The want of precedents in the judicial history of England must not limit our courts in dealing with such offences. The want of precedents in England arises largely from the growth of cities and towns, the development of commerce and trade, changes in the relations of men and things, and the evolution of government which have created new conditions of crime. In some cases it is due to the enactment of

special laws with very severe penalties, which were rendered necessary when the changed circumstances of society brought opportunities for the commission of crimes theretofore unknown and impossible. In such cases, although these crimes contravened certain broad principles of the common law, indictments were of course brought under the statutes notwithstanding the power under the common law to punish them. These statutes were merely declaratory of the common law. Wherever these statutes may not be in force and the common law is recognized, of course indictments could be brought notwithstanding the absence of common law precedents: State *v.* Briggs, 1 Aikens (Vt.) 226 (1826); Loomis *v.* Edgarton, 19 Wend. (N. Y.) 419 (1838) and Com. *v.* Chapman, 13 Met. (Mass.) 68 (1847). There are certain broad principles of the common law which are recognized as the basis of indictability in the absence of precedents. All offences destructive or obstructive against government or public justice, or against public morals or the public peace can be indicted as common law offences in the absence of statute law or precedents. In fact whatever is provocative of a public disturbance, or consists of a malicious injury to the property of another, in such a way as to provoke a violent retaliation, or constitutes a public scandal or indecency, or is a breach of official duty, can be indicted as an offence at common law: Walsh *v.* State, 65 Ill., 58 (1872).

The test is not whether precedents can be found in the books, but whether the acts complained of injuriously affect the public police and economy: Com. *v.* McHale, *supra.*

Having considered the subject of what are common law offences, we will next take up the other matter which is decided in the case of Com. *v.* Randolph, viz., solicitations to commit crime. A mere intent to commit crime, as long as it is kept within the breast of the offender, is beyond the reach of the law, for it cannot undertake to regulate the thoughts and intents of the heart.' The best it can do is to punish open acts. For the rest it trusts the people to the refining influences of Christian education: Smith *v.* Com., 54 Pa., 209 (1867).

The intention to corrupt an officer is not punishable, but when that intention is evidenced by an overt act, such as a solicitation, the defendant has done his part towards consummating the guilt and may be punished therefor: Barefield *v.* State, 14 Ala., 606 (1848).

In Schofield's Case, Cald., 397, Lord MANSFIELD said: "So long as an act rests on bare intention, it is not punishable, but immediately when an act is done the law judges not only of the act done, but the intent with which it is done, and if accompanied with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable."

The overt act which the law will recognize and take hold of is an attempt or a solicitation, which in a certain sense is a species of attempt.

In 1 Bishop on Criminal Law, 7th ed., § 767, it is said that "A common form of attempt is the solicitation of another to commit a crime; the act which is a necessary ingredient in every offence, consisting in the solicitation;" and in § 768 that all sufficiently direct

solicitations to commit any of the heavier offences are punishable attempts. It is within established principles to hold that, in proportion to the gravity of the particular crime, the solicitation, in order to come within the law's group, may be less direct

In State *v.* Avery, 7 Conn., 266 (1828) the Court said that a solicitation is an act and should be considered as an offence.

The Supreme Court of New York in People *v.* Bush, 4 Hill, 133 (1843) said that if the arson had been committed, which the defendant solicited another to perform, the solicitation would have been merged in an actual felony. There would been a principal arson by one and an accessorial offence by this defendant. The attempt of the latter was to have both crimes committed; and the question of principal and accessory being eliminated from the case, I see nothing against considering the matter in the ordinary way, that what a man does by another, he does by himself; in other words the solicitation by the defendant was the same thing as if he had taken steps preparatory to setting the building on fire himself. An attempt may be immediate; but it is very often a remote effort or indirect measure taken with intent to affect an object.

An approved writer on criminal law speaks of solicitation as belonging to a class of attempts.

As regards the requisites of an indictment for solicitation, Bishop, in his work on Criminal Law, 7th Ed., Vol. I., § 768, says: "The law as adjudged holds and has held from the beginning, in all this class of cases, an indictment sufficient which simply charges that the defendant at the time and place mentioned, 'falsely, wickedly, and unlawfully did solicit and incite 'a person name to commit the substantive offence, without any further specification of overt acts. It is in vain, then, to say that mere solicitation, the mere entire thing which need be averred against a defendant as the ground for his conviction, is no offence."

We have now considered the question of intent and seen at what stage the law will take notice of the intention when it has progressed beyond the breast of the offender, and is declared by some overt act, and we have seen that a solicitation is, in substance, if not in reality, a species of attempt.

The general rule on the subject of the indictability of attempts is the one laid down by Baron PARKE in Rex *v.* Roderick, 7 C. & P., 795 (1837), and adopted by Russell on Crimes, p. 84, which is as follows: "An attempt to commit a misdemeanor is a misdemeanor whether the offence is created by statute, or was an offence at common law." From this rule we would draw the inference that solicitations in general to commit a crime are indictable, and on examining the cases, we will see that the weight of authority supports that proposition.

In the principal case which we are considering there is a dictum which would seem to narrow the scope of indictments for solicitations to commit crimes and *limit them to solicitations to commit felonies.* The decided cases seem to be against this dictum.

Chief Justice HOLT said in Regina *v.* Turvey, Holt, 365 (1703), "To persuade and solicit is a crime."

In Rex *v.* Plympton, 2 Ld. Ray-

mond, 1377 (1725), the Court said that it is indictable to promise money to a member of a municipal corporation for his vote at an election of said corporation, although nothing is done in pursuance thereof. This would be but a solicitation to commit a misdemeanor.

In Rex *v.* Lawley, Fitzgibbon, 263 (1730), it was held that an indictment charging defendant with endeavoring to dissuade a witness, the defendant knowing that J. C. had been indicted for forgery, was good.

In Rex *v.* Vaughan, 4 Burrows, 2494 (1769), the defendant was indicted for soliciting a privy counsellor to obtain an office for him.

In Rex *v.* Higgins, 2 East, 5 (1801), there was an indictment for soliciting another to steal and embezzle from his employer. Held to be good, although nothing was done in pursuance thereof, as such offences have a tendency to a breach of the peace. In this case the judge turned the decision on the broad principle that it tended to a breach of the peace, and also intimated further that a solicitation to commit a misdemeanor was indictable by saying, "all these cases prove that inciting another to commit a misdemeanor is itself a misdemeanor, *a fortiori*, therefore it must be such to incite another to commit felony."

The case of State *v.* Caldwell, 2 Tyler (Vt.) 212 (1802), was an indictment for advising and counselling another to resist a sheriff who was in the act of making a levy. Held to support an indictment for impeding and hindering a civil officer in the execution of his duty.

U. S. *v.* Lyles, 4 Cranch C. C., 469 (1834), decided that a solicitation to commit an assault and battery on another amounted to a misdemeanor at common law.

In State *v.* Keyes, 8 Vt. 57 (1836), the Court said that soliciting a witness to stay away from a public prosecution is indictable as a misdemeanor at common law, although such witness had not been regularly served with a subpœna, but who was known to the defendant to be a material witness. And in addition they said that they had no hesitation in holding that the solicitation of another to commit an offence should, with few exceptions, be indicted as a misdemeanor at common law.

People *v.* Bush, 4 Hill (N. Y.), 133 (1843), was an indictment for soliciting another to commit arson. Bishop, in his work on Criminal Law, 7th Ed., Vol. II, § 20 (note), says that, although this was under a statute, yet the statute was merely declaratory of the common law.

In Barefield *v.* State, 14 Ala., 606 (1843), it was said that the law abhors the least tendency to corruption, and at common law all attempts to bribe, though unsuccessful, were indictable.

In State *v.* Carpenter, 20 Vt. 9 (1847), which was an indictment for soliciting a witness not to attend a trial, the Court said that the attempt, whether successful or not, to obstruct the administration of justice, is a substantive offence punishable by common law. Com. *v.* Reynolds, 14 Gray (Mass.), 87 (1859), is to the same effect.

In the New York case of McDermott *v.* People, 5 Park C. C., 102 (1860), the prisoner collected certain materials in his room and then solicited another to make use of

them in burning A's barn. *Held*, affirming People *v.* Bush, *supra*, that this proof warranted a conviction for an attempt.

Regina *v.* Quail, 1 F. & F., 1076 (1866), was an indictment for inciting a servant to steal some silk from his employer. *Held*, to be good even if servant purposely submitted to the solicitation with intent to betray the defendant. Regina *v.* Gregory, 10 Cox C. C., 459 (1867), is to the same effect, and decides that the mere act of soliciting is indictable as a misdemeanor.

In State *v.* Ellis, 33 N. J. L., 102 (1868), there was an indictment for offering a bribe to a member of Councils. *Held*, that the common law offence of bribery is indictable, and that the offence is complete when the offer is made, although in a matter over which the public officer has no jurisdiction.

In Walsh *v.* People, 65 Ill., 58 (1872), the defendant was indicted for a proposal, made by himself, to receive a bribe to influence his action as alderman. The Court said: "We are of the opinion that it is a misdemeanor to propose to receive a bribe. It must be regarded as an inciting to offer one and a solicitation to commit an offence. This at common law is a misdemeanor. Inciting another to the commission of an indictable offence, though without success, is a misdemeanor."

Regina *v.* Ransford, 13 Cox C. C., 9 (1874), was an indictment for writing and sending a letter to a boy with the intent to incite him to commit an unnatural offence. KELLY, C. B., said: "I am clearly of opinion, in point of law, *that any attempt to commit a misdemeanor is in itself a misdemeanor*, and I am also of opinion that to incite or even solicit another person to commit a felony or to do any act with intent to induce another to commit such offence, is a misdemeanor."

In State *v.* Ames, 64 Maine, 386 (1875), the Court said: "That it is a crime known to the common law to induce a witness to absent himself from a court where he is legally bound to appear to give testimony upon a criminal process there pending, is too clear for argument and too well settled to require the citation of authorities." The use of persuasive means, thus to obstruct the course of justice, is an overt act toward the consummation of a criminal purpose, and is indictable, whether or not the offender succeed in his attempt.

Com. *v.* Flogg, 135 Mass., 545 (1883), was an indictment for soliciting another to set fire to a barn and offering money for so doing. *Held*, that it is an indictable offence at common law for one to counsel and solicit another to commit a felony or other aggravated offence, although the solicitation is of no effect and the crime is not committed.

With regard to the principle laid down in Com. *v.* Randolph, that a solicitation to commit murder is a misdemeanor at common law, while abundantly sustained by principle and authority, yet there seems to have been but very few cases of this kind either in the United States or in England.

In addition to the principal case and the one referred to therein, there is the case of Rex *v.* Guy, mentioned in 2 East, 22. I am informed by the District Attorney of Philadelphia County that there is such an indictment now pending in this city, and that it is the only case which has ever arisen there.

This want of authorities should be considered, I think, to result more from the heinousness of the crime than from any doubt as to its indictability.

The doctrine which we have just considered and which is maintained by Mr. Bishop and a large number of cases both in this country and in England is limited somewhat by Mr. Wharton, in the 9th Ed. of his work on "Criminal Law," § 179, where he says: "Are solicitations to commit crime independently indictable? They certainly are, as has been seen, when they in themselves involve a breach of the public peace, as is the case with challenges to fight and seditious addresses. They are also indictable when their object is interference with public justice, as where a resistance to the execution of a judicial writ is counseled or perjury is advised, or the escape of a prisoner is encouraged, or the corruption of a public officer is sought. . . . They are indictable, also, when they are in themselves offences against public decency, as is the case with solicitations to commit so doing;" but subsequently adds this limitation: "And the better opinion is that, where the solicitation is not in itself a substantive offence, or where there has been no progress made towards the consummation of the independent offence attempted, the question whether the solicitation is by itself the subject of penal prosecution must be answered in the negative."

The judge who delivered the opinion of the lower Court in Com. *v.* Randolph said, in answer to this: "I confess I do not understand him when he speaks of solicitations which 'themselves involve a breach of the public peace.' He must mean 'a solicitation which tends to a breach of the peace.' A mere solicitation cannot involve a breach of the peace. A solicitation to commit murder is a solicitation to do an act which if done would be a breach of the public peace. . . . He begs the whole question, however, when he says that a solicitation is indictable only when it is a substantive offence. If it is indictable, then it is a substantive offence. If it is a substantive offence, then it is indictable. We can learn nothing from this argument based on the idea of substantive offences."

Regina *v.* Daniel, 6 Mod., 100 (1703), which was an indictment for soliciting an apprentice to leave his master, and Regina *v.* Callingwood, 2 Ld. Raymond, 1116 (1704), which are often sited in opposition to the indictability of solicitations, did not decide that question because the case went off on other grounds. In fact, in the first case Lord HOLT says that perhaps an indictment would lie for the evil act of persuading another to steal.

The case of Com. *v.* Smith, 54 Pa., 209 (1867), apparently decides that a solicitation to commit a misdemeanor is not indictable. The judge cites, in his opinion, the case of Rex *v.* Butler, 6 C. & P., 368 (1834), which was an indictment for soliciting a woman to lie down on a bed and then getting upon her. This case was, in substance, says Bishop in his work on Criminal Law, 7th Ed., Vol. I, § 768, a solicitation of the woman to allow defendant to commit an assault upon her. Such a count would be bad, for if she consented, there would be no assault. It could not be indicted as a solicitation to commit adultery, because that is no crime in England. The case of Com. *v.*

Smith is, therefore, only authority for saying that a solicitation to commit adultery is not punishable in Pennsylvania, and ought not to be considered an authority for the proposition that a solicitation to commit a misdemeanor is not indictable.

In Brockway *v.* People, 2 Hill (N. Y.), 561 (1842), the Court held that the renting of a house for the purposes of prostitution, was not an indictable offence. It said that every act done in furtherance of a misdemeanor, is not the subject of indictment; but to constitute it such, it must tend directly and immediately, if not necessarily, to the commission of the misdemeanor.

McDade *v.* People, 29 Mich., 50 (1874), decided that a statute, punishing the setting fire to a building with the intent that it should be burned, or the attempt by any other means to cause the building to be burned, will not warrant a prosecution for an attempt based on solicitation alone.

The case of Cox *v.* People, 82 Ill., 191 (1876), seems to follow the opinion of Mr. Wharton, in saying that a solicitation to commit crime is not in itself an offence, unless the offence is of such a character that its solicitation *tends* to a breach of the peace or the corruption of the body politic. But Mr. Wharton went further, and said that the solicitation must involve a breach of the peace. It was held in this case that a solicitation to commit incert is not indictable.

Mr. Wharton approves of this case; but says that a solicitation to commit sodomy is indictable, because it is in itself an offence against public decency. It may well be asked, as was said in Com. *v.* Randolph: "At what point in libidinous crimes does he draw the line of 'public decency?'"

State *v.* Baller, 26 W. Va., 90 (1885), gives a very exhaustive treatise on the the whole subject.

The case of Lamb *v.* State, 67 Md., 524 (1887), is only authority for holding that a mere solicitation to commit a misdemeanor is not in itself a misdemeanor, and that in the face of a strong dissent.

Hicks *v.* Com., 86 Va., 223 (1889), was a case in which the evidence showed a procurement of some poison, and an ineffectual solicitation of a third party to put it in the drink of the intended victim. Held, that "such acts are not an attempt, but only a preparation." To my mind some of his arguments to show the difference between an attempt and a preparation, are very finely drawn, and hardly convincing. In the opinion in that case the judge refers to Stabler *v.* Com., 95 Pa., 318 (1880), as an authority, but it decided that the mere delivery of poison to a person, and soliciting him to place it in the spring of another, is not "an attempt to administer poison" within the meaning of the Act of March 31, 1860, P. L. 403, § 82. However, in another count of the same indictment, the defendant was charged with soliciting A. B. to administer a certain poison to C. D. and other persons unknown, and this count was sustained, MERCUR, J., saying: "The conduct of the plaintiff in error, as testified to by the witness, undoubtedly shows an offence for which an indictment will lie without any further act having been committed."

The Court said in Com. *v.* Randolph, "We have, however, learned from the examination of the authorities already made, that there

are crimes which it is a misdemeanor at common law to solicit a person to commit. All the authorities noticed, including Mr. Wharton, agree on that. The only difficulty is to determine just what crimes, or what class of crimes, it is criminal to solicit or incite another to commit."

In Com. *v.* Willard, 22 Pick., (Mass.), 478 (1839), Chief Justice SHAW said, "It is difficult to draw any precise line of distinction between the cases in which the law holds it a misdemeanor to counsel, entice or induce another to commit crime and when it does not. In general it has been considered as applying to cases of felony, though it has been held that it does not depend upon the mere legal and technical distinction between felony and misdemeanor. One consideration, however, is manifest in all the cases, and that is, that the offence proposed to be committed by the counsel, advice or enticement of another is of a high and aggravated character tending to breaches of the peace or other great disorder and violence, being usually what are considered *mala in se*, or criminal in themselves, in contradistinction to *mala prohibita*, or acts otherwise indifferent than as they are restrained by positive law."

Judge PAXSON, in Com. *v.* Jones, 31 Legal Int. (Pa.), 332 (1874), said, that there may be, perhaps, a distinction between misdemeanors which are *mala in se* and such as are *mala prohibita*, as in the case of acts which are not *per se* penal, but made the subject of a statutory fine, as a matter of municipal regulation.

As a result of my examination of the cases bearing on the subject of solicitations I should say that a solicitation to commit a crime, whether it be a felony or a misdemeanor, is indictable unless it be some offence which because of its "little magnitude cannot have the appendage of attempt," examples of which would be solicitations to make illegal sales of liquor: Com. *v.* Willard, *supra*, and were police offences, etc.

The wisdom and indeed the necessity of punishing one who solicits the commission of crime was, perhaps, never better demonstrated than by President LINCOLN during 1863 in defending his action in having sent Vallandigham across the rebel line for having made a speech soliciting disloyalty. Mr. LINCOLN said, "Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of the wily agitator who induces him to desert? This is none the less injurious when effected by getting father or brother or friend into a public meeting, and there working upon his feelings until he is persuaded to write the soldier boy that he is fighting in a bad cause, for a wicked administration of a contemptible government, too weak to arrest and punish him if he shall desert. I think that in such a case to silence the agitator and save the boy is not only constitutional, but is withal a great mercy."

C. PERCY WILCOX.